

FILED

JUL 23 2012

AT O'CLOCK

Lawrence K. Baerman, Clerk - Syracuse

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORKSHIRLEY A. KITTLE,
Plaintiff,

- against -

WHITNEY M. YOUNG, JR. HEALTH CENTER,
INC., ST. PETER'S HOSPITAL OF THE
CITY OF ALBANY, AND DR. ELLEN M.
BIGGERS,

Defendants.

**1:11-cv-1054 (NAM/DRH)
STIPULATION TO REMAND
ACTION BACK TO NEW YORK
SUPREME COURT****Removed: 9/6/11**

Plaintiff Shirley A. Kittle ("Plaintiff") and Defendants St. Peter's Hospital of the City of Albany and Dr. Ellen M. Biggers ("Defendants") (collectively "the Parties"), by and through their respective counsel, hereby agree and stipulate as follows:

1. Plaintiff commenced this medical malpractice action on December 28, 2010 in New York Supreme Court, Albany County.

2. On September 6, 2011, prior co-defendant Whitney Young filed a Notice of Removal on the ground that Whitney Young is a grantee of the US Department of Health and Human Services and its employees are covered under the Federal Tort Claims Act. The Federal Action was assigned docket number 1:11-cv-1054.

3. Whitney Young then promptly moved to dismiss the action as against it for failure to timely file a Notice of Claim. In response to this motion, plaintiff discontinued the action as against Whitney Young, and that Stipulation of Discontinuance was "So Ordered" and filed in the Northern District Clerk's Office on February 7, 2012.


4. The parties are in agreement that there is no longer a basis for Federal Court jurisdiction over this action, and therefore the Parties stipulate that this action should immediately be remanded to the New York Supreme Court, Albany County.

5. The parties are in agreement that no party hereto is an infant or incompetent.


6. The parties agree that each Party shall bear his/her/its own attorneys' fees and costs with respect to the removal and subsequent remand of the Action pursuant to this Stipulation and Order.

7. This Stipulation moots all pending motions before this Court, and all pending deadlines and hearings in this case should be taken off the Court's calendar.

DATED: July ~~12~~, 2012


DAVID H. SWYER, ESQ.
Attorneys for Plaintiff
237 South Pearl Street
Albany, NY 12202

DATED: July 11, 2012


Mandy McFarland
THORN GERSHON TYMANN AND BONANNI, LLP
Attorneys for Defendants:
St. Peter's Hospital of the City of
Albany and Dr. Ellen Biggers
5 Wembley Court, P.O. Box 15054
Albany, NY 12212-5054

SO ORDERED: July __, 2012


Hon. Norman A. Mordue